

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3205 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

CHHIPA WELFARE ORGANISATION - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

Appearance :

MR KETAN A DAVE for Petitioner(s) : 1,
MS ARCHANA RAVAL, AGP for Respondent(s) : 1-3,
RULE SERVED BY DS for Respondent(s) : 4 - 6.

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/04/2007

ORAL JUDGMENT

(1) This petition has been filed with the following prayers:

"5. The petitioner, therefore submit that this Hon'ble Court may be pleased to:

A) Set aside and quash orders dated 27/12/2000 issued by the DEO Ahmedabad city Ahmedabad (Annexure A and B) requiring petitioner school to absorb surplus teacher in the petitioner's

school.

- B) Permanently restrain respondent authority from requiring petitioner's minority school to absorb any teacher rendered surplus from the other school or any other teacher not selected by petitioner Trust.
- C) Quash and set aside the orders dated 26.2.2001 (Annexure E), 27.2.2001 (Annexure F) & 14.03.2001 (Annexure G) issued by DEO Ahmedabad city in connection with withholding maintenance grant payable to school on the basis that petitioner has failed to absorb surplus teachers in petitioner's school allocated by DEO.
- D) Quash and set aside the condition imposed by the Director of Education Secondary Education Gujarat State Gandhinagar in his order dated 25/9/2000 requiring petitioner school to absorb surplus teacher while granting permission to increase one class in Std. X.
- E) Pending admission, hearing and final disposal of this petition, issue interim injunction restraining the respondent authority from enforcing orders dated 26.2.2001 (Annexure), 27.2.2001 (Annexure F) & 14.3.2001 (Annexure G) withholding maintenance grant payable to petitioner school on the basis that petitioner has failed to absorb surplus teacher allocated to the petitioner school by the DEO.
- F) To pass such other and further reliefs as may be

please be deemed fit and proper.”

- (2) Heard the learned advocate appearing for the petitioner. When the attention of the learned advocate was invited to the fact that the controversy brought before the Court stands concluded by judgment dated 04.12.2006 in the case of *Shree Vidhya Vikas Mandal & Ors. Vs. State of Gujarat & Ors.*, Special Civil Application No.2288 of 1998 and cognate matters, (since reported in 2007(1) GLR 479), the learned advocate submitted that though all the issues raised in the petition have been considered in the aforesaid judgment the fact that the petitioner is a minority institution in light of the provisions of Article 30(1) of the Constitution of India whether the resolution of the State Government can have any effect or not has not been considered.
- (3) The aforesaid contention that the compulsion to absorb teachers not selected by the minority institution and rendered surplus elsewhere restricts the exercise of fundamental right to administer a school of the choice of the minorities does not merit

acceptance. As laid down by the Apex Court in the case of *T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors.*, (2002) 8 SCC 481, it cannot be argued by a minority institution that no condition can be imposed while giving aid to a minority institution. The following observations made by the Apex Court may be fruitfully reproduced:

“140. We have now to address the question of whether Art. 30 gives a right to ask for a grant or aid from the State, and secondly, if it does get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Art. 30(1) illusory. The founding fathers have not incorporated the right to grants in Art. 30, whereas they have done so under Art. 337; what, then, is the meaning, scope and effect of Art. 30(2)? Article 30(2) only means what it States, viz., that a minority institution shall not be discriminated

against when aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an object surrender of the right to management is made a condition of aid, the denial of aid would be violative of Art. 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Art. 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfillment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Art. 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Art. 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant-of-aid to that educational institution cannot be discriminated against, if other educational

institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority run institution or a minority run institution ”

- (4) Thus, the ratio that flows from the aforesaid discussion is that conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority run institution or a minority run institution. The submission that the decision of the Apex Court in case of TMA Pai (supra) has to be read only in context of admission of students does not merit acceptance. A decision has to be read for the ratio that is laid down in the decision. The earlier decisions of the Apex Court, on which reliance has been placed on behalf of the petitioner, namely, *The Ahmedabad St. Xaviers College Society & Anr. Vs. State of Gujarat & Anr.*, AIR 1974 SC 1389 and *St. Stephen's College Vs. The University of Delhi*, AIR 1992 SC 1630 have been referred to and considered by the Constitutional Bench in the case of TMA Pai Foundation (supra).

- (5) In the circumstances, it is not necessary to set out any other facts and contentions in detail. The petition is required to be allowed on the same terms and directions made by this Court in the case of *Shree Vidhya Vikas Mandal & Ors. Vs. State of Gujarat & Ors*³. (supra). The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Bhavesh*